#60531

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
AUG 16 2012
CLERK, U.S. DISTRICT COURT
By ________ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF TEXAS

ORIGINAL

Joe Hunsinger
Plaintiff Pro Se'

V.

Linebarger Goggan Blair & Sampson, LLP.
Defendant

Case No: **3-12CV-2921D**

Civil Rights Violation Complaint
Trial By Jury Demanded

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

Comes now the Plaintiff Joe Hunsinger :
Plaintiff's Complaint is based on the the Fair Debt Collection Practices Act *15 U.S.C. §1692 et seq.* (FDCPA). At all times hereinafter mentioned, The Plaintiff is a resident of Dallas County State of Texas. From here forward Joe Hunsinger, will be known as the Plaintiff.

JURISDICTION AND VENUE

Jurisdiction of this court arises pursuant to *15 U.S.C. §1692k(d)* and which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy."
The Defendant Linebarger Goggan Blair & Sampson, LLP. is a third party debt collector and conducts business in the state of Texas and is located at 900 Arion Parkway, Suite 104, San Antonio, Texas 78216, as such is governed under the Fair Debt Collection Practices Act *15 U.S.C. §1692 et seq.*(FDCPA). Plaintiff is an adult individual and is a "consumer" as the term is defined by 15 U.S.C. §1692a(3), brings this action to the fact as to how an alleged account was or was not validated and wrongful actions without providing proof of an alleged account to the Plaintiff in the attempted collection of the alleged account, violated the civil rights of the Plaintiff and the law as outlined in the FDCPA *15 U.S.C. §1692 et seq.*

PRELIMINARY STATEMENT

Plaintiff brings this action for damages based upon Defendants Linebarger Goggan Blair & Sampson, LLP. for violations of the Fair Debt Collection Practices Act *15 U.S.C. §1692, et seq.* without providing proof of an alleged account, failure to provide proof of the alleged account, the amount or legal status of alleged debt, and willfully and negligently failed to have proper procedures and apparatus in place which would promptly and accurately investigate alleged debt upon being notified of the errors.

INTRODUCTION

Plaintiff came into contact with Defendant, a debt collector.

On or about August 19, 2011 the Defendant contacted the Plaintiff via US Mail with a notice of an alleged debt that was owed. On or about August 23, 2011 the Plaintiff sent a letter of dispute and debt validation letter to the Defendant via certified US Mail Return Receipt # 7007 2680 0002 0292 9099 which the Defendant received on or about August 31, 2011. To date the Defendant has failed to validate the alleged debt as was required by law.

Count I against the Defendant Under FDCPA

Failure to validate the alleged debt/account: Failure to provide proof of alleged debt/account.

Initial contact on or about August 19, 2011.

§ 809. Validation of debts 15 USC 1692g, in part:

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this title may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

Plaintiff demands Judgment in the amount of $1000. To this date Defendant failed to respond to Plaintiffs debt validation letter, received on March 16, 2012 in a timely manner as required by law. Defendant willfully and negligently failed to have proper procedures and apparatus in place which would promptly and accurately delete alleged debt upon being notified of the errors.

Count II against the Defendant Under FDCPA

The Defendant has violated the FDCPA and the Plaintiffs rights under the law Plaintiff has disputed and asked for validation of the alleged account with the Defendant in a timely manner as required under FDCPA. Defendant falsely represented the character, amount, or legal status of any alleged debt.

§ 807. False or misleading representation 15 USC 1692e(2) in part:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

2) The false representation of_

(A) the character, amount, or legal status of any debt; or

§ 813. Civil liability 15 USC 1692k in part:

(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of (1) any actual damage sustained by such person as a result of such failure;

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action,

(i) such amount for each named plaintiff as could be recovered under subparagraph (A), and

(ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

Plaintiff demands judgment in the amount of $1000. This is for the erroneous and inaccurate amount of alleged debt.

Count III against the Defendant Under FDCPA

The Defendant attempted to collect on an alleged debt from Plaintiff, a violation of the FDCPA.

§ 807. False or misleading representation 15 USC 1692e(5) in part:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

Plaintiff demands a judgment in the amount of $1000. This is for Defendant's failure of factual deficiencies, as opposed to legal error, after being notified by the Plaintiff a belief that what is false is true or that what is true is false.

Count IV against the Defendant Under FDCPA

The Defendant has violated the FDCPA and the Plaintiffs rights under the law Plaintiff has disputed asked for validation of the alleged account with the Defendant in a timely manner as required under FDCPA.

§ 813. Civil liability 15 USC 1692i

(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of (1) any actual damage sustained by such person as a result of such failure;

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action,

(i) such amount for each named plaintiff as could be recovered under subparagraph (A), and

(ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

Plaintiff demands judgment in the amount of $3000.00. This is for Private Attorney General fees for Plaintiff, Pro-Se.

Summation

Plaintiff has disputed the alleged account with the Defendant. And therefore Defendant has violated the Plaintiff's civil rights and damaged the Plaintiff both monetarily and emotionally. Defendant cannot claim a bono fide error in this matter. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under FDCPA is not a bona fide error. Defendant made an error in its attempt to collect an alleged debt from Plaintiff. Defendant was willfully and grossly negligent in ignoring Plaintiff dispute and validation letter. Must Plaintiff send the Defendant a hundred dispute and validation letters, at six dollar and some change each, to pierce the bona fide error defense and prove that noncompliance was intentional? Plaintiff had contacted the Defendant in an attempt to mitigate his losses but was shunned from further communication by defendant's attorney.

WHEREFORE, the Defendant has violated the Fair Debt Collection Practices Act and the Fair Credit Reporting Act, Plaintiff demands judgment in the amount of $6000 for their violations of the FDCPA, plus all cost of this action along with punitive damages in the amount of $500 or as the court may allow, an apology from Defendant for trashing Plaintiffs civil rights, along with Private Attorney General fees as prescribed by law Graziano v. Harrison, 950 F. 2nd 107, 113 (#d Cir. 1991), 15 U.S.C. sec. 1692k(a)(3), (see Zagorski v. Midwest Billing Services, Inc., F. 3d---(1997 WL 695401, 7th Cir.) or 128F. 3d 1164 (7th Cir., 1997).

Respectfully submitted August 16 , 2012.

Joe Hunsinger
7216 C.F. Hawn Frwy.
Dallas, Texas 75217
Joe75217@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing complaint/summons vs. Linebarger Goggan Blair & Sampson, LLP. has been served upon the Defendant via first class mail at 900 Arion Parkway, Suite 104, San Antonio, Texas 78216 on or about August 16 , 2012 with affidavit of service by Process Service Receipt to be submitted to the Clerk of the Court.

Joe Hunsinger
7216 C.F. Hawn Frwy.
Dallas, Texas 75217
Joe75217@gmail.com

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

RECEIVED
AUG 1 6 2012
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

ORIGINAL

I. (a) PLAINTIFFS
Joe Hunsinger

DEFENDANTS
LINEBARGER GOGGAN BLAIR & SAMPSON, LLP.

(b) County of Residence of First Listed Plaintiff DALLAS
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant STATE OF TEXAS
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

3-12CV-2921-D

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☒ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:
15 USC 1692

Brief description of cause:
FAILED TO INVESTIGATE AN ALLEGED ACCOUNT OR DEBT

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23 **DEMAND $**

CHECK YES only if demanded in complaint: **JURY DEMAND:** ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE August 14, 2012

SIGNATURE OF ATTORNEY OF RECORD [signature] PRO-SE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE